

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NELSON GUERRERO,)	CASE NO. 4:09CV71
)	
PLAINTIFF,)	JUDGE PETER C. ECONOMUS
)	
V.)	
)	
CORRECTIONS CORPORATION)	ORDER ADOPTING REPORT
OF AMERICA, <i>et al.</i>,)	AND RECOMMENDATION
)	
DEFENDANTS.)	

I. Introduction

This matter is before the Court upon Defendants Dr. Aiad Toss and Daniel Hall's ("Defendants") Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. (Dkt. # 26). On April 23, 2009, this Court issued an order assigning this case to Magistrate Judge Benita Y. Pearson for general pre-trial supervision. (Dkt. # 5). On May 28, 2010, the Magistrate Judge issued a Report and Recommendation ("R&R"), recommending that the Court grant Defendants' Motion for Summary Judgment and dismiss Guerrero's Complaint with prejudice. (Dkt. # 32). On June 15, 2010, Guerrero filed Objections to the R&R. (Dkt. # 33). On June 28, 2010, Defendants filed a Response to Plaintiff's Objections. (Dkt. # 34).

II. Gurerro's Objections

In his Objections, Guerrero restates several of the same arguments he made in his Response to the Defendants' Motion for Summary Judgment, including his assertion that he was unable to produce medical evidence to support his claim because the Defendants

repeatedly denied Guerrero's requests for access to a specialist or laboratory analysis. However, the Magistrate Judge correctly pointed out that Guerrero could have, at the very least, submitted his own medical records showing the care he received, or supported his claims with deposition testimony or affidavits. Guerrero simply has not shown any evidence that the Defendants were deliberately indifferent to his medical needs. Rather, the record indicates that Guerrero received regular medical care, but disagreed with his physician's diagnosis. Such a dispute does not rise to the level of an Eighth Amendment claim. See e.g., Westlake v. Lucas, 537 F.2d 857, 860 n.5 (6th Cir. 1976) ("Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law.").

Guerrero's remaining objections relate to settlement negotiations in this case. This Court will not consider those statements as they are inappropriately raised as a basis upon which to overrule the Magistrate Judge's recommendation.

III. Conclusion

This Court has reviewed the R&R *de novo*, and finds that it is well-supported. This Court has also reviewed Plaintiff's objections and finds that they are without merit. Therefore, the Magistrate Judge's R&R is hereby **ADOPTED**. (Dkt. # 32). Defendant's Motion for Summary Judgment (Dkt. # 26) is **GRANTED** and Plaintiff's Complaint is hereby **DISMISSED** with prejudice.

IT IS SO ORDERED.

/s/ Peter C. Economus – July 27, 2010
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE